

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VICTOR SEMENYUK, *et al.*,

Plaintiffs,

v.

TATYANA ZAGREBELNY, *et al.*,

Defendants.

CASE NO. C16-1897-JCC

ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND

This matter comes before the Court on Plaintiff Victor Semenyuk's motion to remand and for sanctions (Dkt. No. 5). Defendants have not responded. Therefore, pursuant to Local Civil Rule 7(b)(2), "such failure may be considered by the Court as an admission that the motion has merit."

On October 14, 2016, Plaintiff filed this unlawful detainer action against Defendant Tatyana Zagrebelny in King County Superior Court. (Dkt. No. 1-1.) Defendant was personally served on October 19, 2016. (Dkt. No. 6-8.) On December 12, 2016, Defendant removed the action to federal court, asserting Fourth and Fourteenth Amendment defenses. (Dkt. No. 1.) Plaintiff now asks the Court to remand the case because the removal was untimely and the Court lacks subject matter jurisdiction. (Dkt. No. 5 at 2.) Plaintiff also requests costs and fees incurred by bringing this motion. (*Id.* at 2, 13.)

Once removed, a case can be remanded to state court for either defects in the removal

1 procedure or lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(c). Pursuant to 28 U.S.C.  
2 § 1446(b)(1), a removal is timely if it is filed within 30 days after Defendant receives the  
3 complaint. The Court has subject matter jurisdiction where the matter (1) arises under the  
4 Constitution, laws, or treaties of the United States, 28 U.S.C. § 1331, or (2) has an amount in  
5 controversy exceeding \$75,000 and there is complete diversity, 28 U.S.C. § 1332. Subject matter  
6 jurisdiction arises from a plaintiff's complaint and the Court does not have federal question  
7 jurisdiction where the only federal issues are federal defenses raised by a defendant. *Provincial*  
8 *Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1086 (9th Cir. 2009).

9       The Court concludes that the removal was untimely and it lacks subject matter  
10 jurisdiction over this matter. First, Plaintiff removed the case more than 30 days after being  
11 served on October 19, 2016. Second, the complaint's claim arises solely under Washington state  
12 law and Defendant's Fourth and Fourteenth Amendment defenses do not confer federal question  
13 jurisdiction. Third, Plaintiff Victor Semenyuk and Defendant Tatyana Zagrebelny both live in  
14 Washington and therefore the parties are not completely diverse. As such, the Court GRANTS  
15 the motion to remand.

16       As for the request for costs and fees, attorney fees and costs are recoverable pursuant to  
17 28 U.S.C. § 1447(c) where the removing party "lacked an objectively reasonable basis for  
18 seeking removal." *Martin v. Franklin Capitol Corp.*, 546 U.S. 132, 141 (2005). Here, removal  
19 was clearly improper as it was untimely and the Court lacks subject matter jurisdiction on the  
20 face of the complaint. Therefore, the Court GRANTS Plaintiff's request for fees and costs.  
21 Plaintiff has presented evidence on the attorney fees incurred in both the state action and to bring  
22 this motion to remand. (Dkt. No. 6 at ¶ 3.) However, the Court concludes that only the fees for  
23 bringing the motion to remand are appropriate in this case. The Court ORDERS Plaintiff to  
24 submit a more detailed documentation that outlines the costs incurred to bring this motion to  
25 remand.

26       For the foregoing reasons, Plaintiff's motion to remand (Dkt. No. 5) is GRANTED.

1 Additionally, Plaintiff is AWARDED costs and expenses, to be determined after further  
2 documentation. Plaintiff is ORDERED to provide the relevant documentation within 14 days of  
3 this Order. Further, Defendant's motion to dismiss (Dkt. No. 9) is DENIED as moot because the  
4 Court lacks subject matter jurisdiction. The Court DIRECTS the Clerk to send a copy of this  
5 order to the Defendants.

6 DATED this 23rd day of January 2017.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE